In the High Court of Judicature at Madras

Date : 07.03.2007

Coram :

The Hon'ble Mr. Justice S.J. MUKHOPADHAYA
and
The Hon'ble Mr. Justice R. SUDHAKAR

Writ Appeal No: 2848 of 2002
and
W.A.M.P.No.639 of 2006

The Special Officer,
Omalur Taluk Co-operative
Land Development Bank Ltd.
K.K. 187, Mettur Main Road,
Omalur - 626 455,
Salem District. ... Petitioner

-vs-

1. The Presiding Officer,
Labour Court,
Salem.

2. K. Varadarajan,
23, Siviyar Street,
Omalur,
Salem District. ... Respondents

Writ appeal under Clause 15 of Letters Patent against the order of this Court dated 07.03.2002 made in W.P. No: 1776 of 1997.

WP.No.1776/1997:

Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, call for the records from the file of the First respondent herein and quash the award passed in ID.No.541 of 1992, dated 5.1.1996.

For appellant : Mr. M.R. Raghavan
For 2nd respondent : Mrs. S. Girija

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J U D G M E N T

(Judgment of the Court was delivered by R. SUDHAKAR,J.)

The writ appeal has been filed by the Special Officer, Omalur Taluk Co-operative Society, against the order of the learned single Judge dated 7.3.2002 in W.P. No: 1776 of 1997 dismissing the writ petition challenging the award passed in I.D.No.541 of 1992 dated 5.1.1996. The second respondent is the employee in question.

2. The brief facts required for the purpose of disposal of the writ appeal are as follows :- The second respondent was appointed as a typist on 22.11.1990 and was terminated from service abruptly on 31st October 1991 without assigning any reasons. The 2nd respondent having put in 240 days of service in twelve continuous calendar months filed a petition under Section 2(A)(2) of the Industrial Disputes Act, 1947, hereinafter referred to as the I.D. Act, in I.D. No: 353 of 1992 before the Labour Court, Coimbatore, for reinstatement in service with full backwages, continuity of service and for other reliefs. The said I.D. was transferred to the Labour Court, Salem, and renumbered as I.D. No: 541 of 1992. The main contention raised on behalf of the second respondent employee is that his termination is in violation of Section 25 F of the I.D. Act and that the termination order did not state the nature of irregularity in the appointment.

3. The appellant management disputed the claim of the employee stating that the second respondent was employed on daily wage basis on 22.11.1990. He was not employed through employment exchange. Subsequently, his appointment was made on temporary basis on 6.2.1991. The name of the employee was notified through employment exchange on 4.3.1991 and he was called for interview once again on 2.5.1991. The selection was made on 16.5.1991 and put on probation for a period of one year on consolidated salary. On 9.7.1991 at the request of the second respondent, he was appointed on regular scale of pay at Rs.1,106/- by proceeding dated 10.7.1991. The said appointment was found to be irregular and therefore, he was terminated by the Special Officer by proceedings dated 31.10.1991, which is the subject matter of the challenge by way of present appeal. The conciliation having failed, the second respondent employee approached the Labour Court which culminated in the passing of the award, which was challenged in the writ petition. One of the contentions on behalf of the appellant before the Labour Court was that at the time when the second respondent was appointed, he had already crossed the age of 30 years and therefore, in terms of Clause IV of Special Bye-laws of the Bank and also under Rule 149(4) of the Tamil Nadu Co-operative Societies Rules 1988, the second respondent could not have been appointed.

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4. The Labour Court, Salem, considering the rival contentions, held that the order of termination was bad on the ground of non-compliance of Section 25 F of the I.D. Act, even if the initial appointment was irregular as alleged. On merits as observed by the learned single Judge, the Labour Court came to the conclusion that, irrespective of the nature of employment, the employee in question has been in continuous employment for more than 240 days in 12 continuous calendar months. The Labour Court also considered the proceedings dated 10.7.1991, Management Exhibit No.8 wherein the second respondent was granted regular scale of pay. The second respondent was not terminated for indiscipline or on account of any fault in his service. Therefore, the Labour Court held that employer should have complied with the provisions of Section 25 F of the I.D. Act. The Labour Court ordered that second respondent should be reinstated with backwages and continuity of service. As against the same, the writ petition has been filed and the learned single Judge of this Court considered the provisions of law and the various decisions of the Courts and came to the conclusion that the termination of the employee in question is bad and thereby upheld the award and held as follows :-

> *" 22. From the discussions of the judgements referred to above, it is seen that non-compliance of principles of natural justice may render an order of termination invalid. However, when the services of an employee, who is governed by the provisions of Industrial Disputes Act are sought to be terminated, it should be made in a manner known and covered under the provisions of I.D. Act. Except exclusion covered under Section 2(oo) of I.D. Act, all other termination would amount to retrenchment. When such order of termination, which amount to retrenchment is made, the management cannot escape from following Section 25-F of I.D. Act. It is beyond acceptance how the question of illegal and invalid appointment could be imported in a dispute made under the Industrial Disputes Act. The idea of illegal or invalid appointments is quite foreign to the scheme of I.D. Act. The termination of employment of a workman on the ground that his initial appointment was not legal and valid itself qualifies as retrenchment within the meaning of Section 2(oo) of I.D. Act, as termination on the ground of illegal and invalid appointment has not been made an exception to the definition of retrenchment.*
>
> *23. In the case on hand, it is not in dispute that before the impugned order of termination was passed, the writ petitioner did not comply with the provisions of Section 25-F of I.D. Act and therefore only, the first respondent / Labour Court had rightly come to the conclusion that the order of termination of the second respondent from service would amount to*

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retrenchment and consequently non-compliance of section 25-F of I.D. Act would render the order of termination invalid. I do not find any error in the award passed by the Labour Court as the same is in conformity with the law laid down by the Supreme Court."

The present appeal has been filed challenging the said order of the learned single Judge.

5. The main contention raised by the learned counsel on behalf of the appellant is that the original appointment being irregular, the question of following the provisions of Section 25 F of the I.D. Act will not arise and the Labour Court has no jurisdiction to entertain such an application on behalf of the employee in question. According to the learned counsel for the appellant, the provisions of the I.D. Act will not be applicable in the case of an irregular or illegal appointment. Learned counsel relied upon the decision of the Division Bench of this Court reported in Justin L. and another vs. The Registrar of Co-operative Societies, Chennai, reported in 2003 (1) L.L.J. 284. The learned counsel submitted that the appeal filed against the aforesaid decision was dismissed by the Supreme Court. It was therefore, contended that in view of the ratio laid down by the Division Bench, the proceedings under Industrial Dispute Act is not maintainable and the order of the learned single Judge should be set aside and the I.D. Award as well.

6. The Division Bench judgment reported in 2003-I LLJ 284 (Justine L. - vs. - Registrar of Co-operative Societies) was a case of claim for regularisation of illegal appointment in several Co-operative Societies across the State of Tamil Nadu. Most of the writ petitioners contended that their appointments should be regularised on the basis of the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981. In most of the cases it appears that there was no vacancy for the purpose of appointment and it was therefore held by the Court that illegal appointees were not entitled to statutory protection of regularisation and permanent status by virtue of the aforesaid Act, 1981. In the above judgment (2003-I LLJ 284), the Division Bench of this Court held in paragraph 16 as follows:-

"16. Coming to the application of Permanency Act of 1981 or the Industrial Disputes Act, 1947, de hors G.O.Ms.No.86, the said enactments are not applicable to the appointments made in an illegal manner. There is a lot of difference between irregularity and illegality. The appointments here are not irregular but illegal. Irregular is something which is done in an authorised manner but while doing so, there is some procedural irregularity. Illegality is altogether different. An action is illegal if it is contrary to law. The law in the instant case is so clear that the appointments cannot be beyond the permissible cadre

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strength. The rule mandates the fixation of the cadre strength. In fact, amendment of Rule 149 by G.O.Ms.No.212 was only made with that object obligating the societies to fix the cadre strength per force. Government has felt that the general criteria for fixation of the educational qualifications or the executive instructions fixing the cadre strength with expenditure not exceeding 2 to 3% of the working capital, need to be emphasised in a more clear and effective manner. For that reason, the Government brought forth amendment to Rule 149, particularly sub-Rule (1) thereof, by which, every society shall, taking into account its nature of business, volume of transaction and financial position, adopt, with the approval of the Registrar of Co-operative Societies, a special bye-law covering the service conditions of its employees and also enumerated the same, which are as stated below:

> *"(i) Cadre strength and classification of various categories of posts and the qualifications required thereof for each such post.*
>
> *(ii) The method of recruitment for each such post.*
>
> *(iii) The scale of pay and allowances for each such post.*
>
> *(iv) Conditions of probation for each such post.*
>
> *(v) Duties and responsibilities for each such post.*
>
> *(vi) Leave of various kinds admissible and, the conditions thereto for each such post.*
>
> *(vii) The penalties that may be imposed upon, the procedure for taking disciplinary action and inflicting various kinds of punishments on an employee holding each such post and the authority competent to entertain and dispose of appeal made against an order of punishment imposed by the competent authority on a disciplinary proceedings.*
>
> *(viii) Conditions relating to*

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acquisition and disposal of movable and immovable property:

Provided that a minimum period of three years of satisfactory service shall be prescribed for eligibility for promotion from one category to the immediate next higher category of post;

Provided further that the Co-operative Training at the appropriate level may be prescribed as a necessary qualification for specific categories of non-technical posts."

Most of the Societies have not followed the mandate of this Rule. The arguments of the learned counsel for the appellants/petitioners are to the effect that the fault lies with the co-operative societies, which did not adopt the special bye-laws and for that reason, they should not be punished. We are unable to accept this contention for the reason that the illegal appointees cannot have more rights than the co-operative societies themselves. The co-operative societies were totally prevented from, making any appointments until the compliance of the mandate of the above Rule adopting a bye-law containing the particulars specified. Even thereafter, the appointments were to be only strictly as per the approved special bye-laws and not otherwise. Compassion cannot displace the essential legal requirements and as already stated above, essential legal requirements are the cadre strength and the qualifications and these cannot be bye-passed and any infraction in observance of the said essential requirement, makes the action of the Appointing Authority illegal. Neither the Permanency Act of 1981 nor the Industrial Disputes Act, 1947, imply that regardless of the illegal nature of appointments even at the entry stage, statutory protection is afforded under the above Acts after the completion of the man-days, be it 480 or 240 prescribed under the above statutes. The above two enactments have to be read and understood in the context that if only the appointments are authorised and the employees continued even in temporary positions beyond the respective man-days prescribed, the workmen get right to continue further on the legal presumption that the temporary posts are allowed to be treated as permanent. But if the appointment itself is illegal, then the Permanency Act of 1981 or the Industrial

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Disputes Act, 1947 cannot be invoked at all."

The various decisions, which were considered and negatived by the Division Bench was on the contention of the writ petitioners plea with regard to regularisation of the employment, which were stated to be illegal by the department and affirmed by the Court. It was a case of large scale employment from time to time without following the rules, the vacancy position and the procedures prescribed. The Court also considered the decision of the Apex Court with regard to illegal appointment and irregular appointment. In the present case even as per the counter-statement filed by the employer, the case of the employer is irregular appointment. Nevertheless, the Labour Court considering the documents filed came to the conclusion based on Management Ex.8 dated 10.7.1991 that the second respondent was employed on a regular scale of pay. It also came to the conclusion that the employee, the second respondent herein had completed the prescribed period. The learned single Judge while not agreeing with the period of employment agreed with the finding of the Labour Court on the finding that the employer had not complied with the provisions of Section 25F of the Industrial Disputes Act, relying on the decision of the Apex Court in 1990-II LLJ 70 (Punjab Land Development & Reclamation Corporation Ltd., Chandigarh etc. and several others – vs. - Presiding Officer, Labour Court, Chandigarh etc., and several others) and the Division Bench Judgment of this Court in 1996-II LLJ 22 (The President Srirangam Co-operative Union Bank Ltd., - vs. - The Presiding Officer, Labour Court, Madurai and another).

7. This Court is not inclined to go into the merits of the rival claims and the factual aspect of the case. Suffice it to state that once it is accepted that the employee in question has been put on regular scale of pay and the provisions of Section 2(oo) of the Industrial Disputes Act, 1947 is attracted, then the employer is bound to follow Section 25F of the Act. The Decision of this Court in 1996-II LLJ 22/216 (cited supra) will be relevant while considering the issues in the present case. Paragraphs 4 and 5 read thus:-

> *"4. We find it very difficult to accept these contentions. Firstly, the bank, which had appointed the petitioner, had taken his services, and paid wages during the period he worked, cannot now be permitted to say that the appointment was bad in law, therefore, it was entitled to terminate the services without following the procedure prescribed under the I.D. Act. The bye-law referred to above, does not require that the appointment to be approved by the Registrar of Co-operative Societies. Further, the petitioner was not appointed as regular employee. He was appointed only on daily wage basis. The services contemplated under the bye-laws are the regular appointments and not the appointments on daily wage basis, therefore, the contentions based upon the special bye-law and the circular of the Registrar, which cannot be applied to*

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the present case, as it is a pure and simple case of appointment on daily wage basis, cannot be accepted. When once the workman is appointed on daily wage basis and if he works for 240 days in a year, he must be said to be in continuous service as per Section 25B of the Act, as such, he is entitled to be made permanent. However, we do not propose to enter into this aspect of the matter and record any finding on this because it is not one of the points raised in the dispute referred to the Labour Court. The dispute referred to the Labour Court was only with regard to the non-employment of the petitioner and the computation of relief in term of money if it is held that the petitioner is entitled to reinstatement with back wages. For the purpose of this case it is sufficient to point out that the writ petitioner worked for over two years. Thus, he was in continuous service for more than one year, as such, he was entitled to the benefit of Section 25F of the Act. The expression 'retrenchment' as per Section 2(oo) of the I.D. Act means the termination by the employer of service of a workman for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action as long as such termination does not fall within the category of the voluntary retrenchment of a workmen or retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf. Thus, Section 2(oo) does not make any difference between regular appointment or temporary appointment or appointment on daily wage basis or appointment of a person non possessing requisite qualification. Clause (bb) in Section 2(oo) came to be inserted only with effect from August 18, 1984, therefore the said provision is not applicable to the present case. The present case also does not fall under Clause (c) because the services of the petitioner have not been terminated on the ground of continued ill-health. Similarly, Section 25F of the Act specifically provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice (b) the workman has been paid at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of continuous Service or any part thereof in excess of six

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months. This is a case in which the petitioner was in continuous service for more than one year under the bank irrespective of the fact whether the appointment made by the bank was valid one or not. It is not in dispute that the petitioner was temporarily appointed by the Board of the Bank on August 1, 1980 as it is specifically stated in the counter filed by the bank before the Labour Court, Madurai which reads thus:

> *"The Board of respondent bank decided on July 25, 1980 to appoint the petitioner temporarily with effect from August 1, 1980 on wages at Rs.5/- per day and to request the Deputy Registrar of Co-operative Societies to exempt the case of appointment of the petitioner from the circular of the Registrar dated September 17, 1977 as the appointment would be against that circular".*

It is also further stated in paragraph 13 of the counter that the petitioner was to be confirmed on the date of termination of the employment, but the bank could not help terminating his employment instead of confirming him. (emphasis supplied)

5. From the impugned order of termination of the petitioner, it is clear that the same has been done pursuant to the direction issued by the Joint Registrar of Co-operative Societies, Tiruchy in the report made by him in RC.No.14755/81-B5(i) dated April 9, 1982. It may be pointed out here that even though the termination was made pursuant to the direction of the Joint Registrar, nevertheless such a termination was required to be made in accordance with the provisions contained in Section 25F of the Act inasmuch as the said section does not make any difference whether the appointment has been made in accordance with law or not. The expression used in that section is, 'workman employed in any industry who has been in continuous service for not less than one year under an employer', therefore the factum of employment is relevant and not the legality or otherwise of it."

The Division Bench in the above said case had extensively relied upon the decision of the Apex Court and came to the conclusion that the provision of Section 25F of the I.D. Act will have to be followed once it is found that the termination is illegal. The decision of the Division Bench of this Court in L.Justine's case (2003-I LLJ 284 cited supra) will not be applicable to the facts of the present case. In the Justine's case (2003-I LLJ 284), the provision of Section 25 F of Industrial Disputes Act did

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not fall for consideration. The only question decided in that case was whether the illegally appointed employees could be regularised as claimed by them. In the present case, such an issue does not arise for consideration. So far as the Division Bench decision of this Court in L.Justine's case (2003(1) LLJ 284) is concerned, the said case is related to regularisation of service of an employee whose initial appointment was illegal. The Bench held that the illegal appointee cannot take recourse to the Industrial Disputes Act, 1947, for the purpose of regularisation of his services. In the present case, such issue is not involved, but the question is while terminating the service of a workman, even on the ground of irregular appointment, whether the provision of Section 25-F of the Industrial Disputes Act, 1947 is to be followed. The aforesaid question has already been decided by a Division Bench of this Court in Srirangam Co-operative Urban Bank Ltd.'s case (1996(2) LLJ 22/216).

8. In the instant case, the issue before this Court is whether the employer is correct in terminating an alleged irregularly appointed employee by not following the provisions of Section 25 F of the I.D. Act. In view of the clear decision of this Court in Srirangam Co-operative Urban bank Ltd.'s case, (1996 (2) L.L.J. 22/216), and the pronouncement of the Apex Court cited therein, we are of the opinion that the award of the Labour Court is correct and no ground is made out to interfere with the reasoned order of the learned single Judge confirming the same. Accordingly, the writ appeal is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to the costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

gp/ts

To:

The Presiding Officer,
Labour Court,
Salem.

+ 1 CC To M/s.Raghavan, Advocate SR NO. 14096
+ 1 CC To M/s.S.Girija, Advocate SR NO.14079

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gp/24.3.

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